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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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PUBLIC SERVICE
COMMISSION

In the Matter of:

**AN INVESTIGATION OF EAST KENTUCKY
POWER COOPERATIVE, INC.'S NEED
FOR THE GILBERT UNIT AND THE
KENTUCKY PIONEER ENERGY, LLC
PURCHASE POWER AGREEMENT**

)
)
) **CASE NO. 2003-00030**
)
)

**THE APPLICATION OF EAST KENTUCKY
POWER COOPERATIVE, INC. FOR
APPROVAL TO PURCHASE POWER
AGREEMENT**

)
) **CASE NO. 2000-00079**
)
)

**PREPARED TESTIMONY OF DAVID G. EAMES
ON BEHALF OF
EAST KENTUCKY POWER COOPERATIVE, INC.**

Q. Please state your name and address.

A. My name is David G. Eames and my address is 143 Greenwing Court, Georgetown,
Kentucky 40324.

Q. By whom are you employed and in what capacity?

A. I am employed by East Kentucky Power Cooperative, Inc. and I am Vice President of
Finance and Planning.

Q Please provide an analysis of the cost to purchase the output of the Kentucky Pioneer
Energy Project compared to the cost of constructing and operating combustion
turbines as projected in East Kentucky's most recent annual resource assessment,
including assumptions, and reflect the total cost per year and net present value of the
total cost.

A. A capital expansion plan is attached as Eames Prepared Testimony Exhibit I, comparing the East Kentucky April 2003 Integrated Resource Plan ("IRP") (which does not include the KPE power purchase) with the forecast including KPE beginning operations in 2008. A comparison of annual revenue requirements, including the net present value of the annual revenue requirements, is also shown. The forecast including KPE assumes a purchase contract price in 2008 of [REDACTED] mills per kWh escalating to [REDACTED] mills per kWh in 2022. Other than the capital expansion plan and power purchase from KPE, all other assumptions are the same as in the April 2003 IRP.

Q. How many years and hours per year would the purchase from KPE result in excess generation on East Kentucky's system?

A. The attached table entitled "Excess Generation With And Without KPE" (Eames Prepared Testimony Exhibit II) shows the excess energy, hours per year associated with the excess energy, and average megawatts per hour of excess energy on an annual basis, with and without KPE. Excess energy was assumed to be energy sold by the production cost model at a price less than the system dispatch cost on an hourly basis.

Q. At what prices would East Kentucky have to sell the excess KPE generation for the purchase to be economical, and what is the basis for East Kentucky's conclusion that the excess generation can be sold at such prices?

A. A table is attached entitled "Comparison of Estimated KPE Energy Price And Forecasted Market Prices" (Eames Prepared Testimony Exhibit III), which includes this information. The forecasted market prices were developed by East Kentucky

using the Wholesale Price Forecast model. These prices represent firm expected annual spot prices on a 7x24 basis at the Cinergy hub. Based on this data, KPE generation would be under the Forecasted Market Prices during the entire period.

Q. Would there be any operational problems on East Kentucky's system resulting from the excess KPE generation?

A. There could be some potential operational problems when KPE is generating at full capacity and all or most of East Kentucky's coal-fired capacity is available during low load conditions. These conditions could cause some coal-fired units to be cycled off, primarily at night. One remedy for this would be an off peak power sale that would lessen the need to cycle units.

Q. What are the sources and quantities of excess base load generation on East Kentucky's system during the 9.5 year optional extension of the power sale to Wabash Valley, assuming that Wabash Valley exercises its option to continue purchasing the power during that period?

A. EKPC's response to Request 7 dated February 13, 2003, in the Information Request from the Commission Staff in Case No. 2003-00030 shows that EKPC projects that there would be no surplus baseload capacity from the KPE project by 2016, assuming a KPE start-up in mid-2006. The Wabash Valley agreement can currently be terminated by either party at any time, due to the failure of KPE to obtain necessary financing by June 30, 2001. This right to terminate makes the entire agreement effectively unenforceable, unless the parties agree to renegotiate the transaction. East Kentucky anticipates that all major terms of the agreement, including the total term of the sale, would be re-evaluated and potentially changed in the course of any such

renegotiation. Even if the agreement were currently enforceable, Wabash Valley would not have an option to extend the term of its purchase of KPE power without a renegotiation of the purchase price. Absent excess capacity from the KPE project itself, East Kentucky's cost of obtaining adequate capacity and energy to substitute for a sale of 50 MW of KPE output to Wabash Valley after the initial term would be reflected in the price East Kentucky would require from Wabash Valley for such a potential extension of the sale.

Q. Why did East Kentucky enter into a contract in late 2001 for the purchase of 105 MW from Energy Services & Technical Support, and what is the current status of that contract? Please provide a copy of the contract and any written documents evidencing an assignment or cancellation of the contract.

A. Energy Services & Technical Support ("ES&TS") responded to RFP No. 01A and made the short list of bidders. The purpose of RFP No. 01A was to evaluate alternatives for up to 500 MW of capacity as a backup plan to the KPE project. East Kentucky entered into a contract with ES&TS to purchase 75 MW of dispatchable, intermediate capacity. The contract with ES&TS was cancelled effective July 18, 2002, due to the failure of ES&TS to provide acceptable security regarding startup and performance of the project in accordance with the terms of the contract. Attached is a copy of the contract and notice of cancellation (Eames Prepared Testimony Exhibits IV and V).

Q. Does this conclude your testimony?

A. Yes.

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

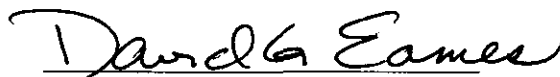
**AN INVESTIGATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC.'S NEED)
FOR THE GILBERT UNIT AND THE) CASE NO. 2003-00030
KENTUCKY PIONEER ENERGY, LLC)
PURCHASE POWER AGREEMENT)**

**THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR) CASE NO. 2000-00079
APPROVAL TO PURCHASE POWER)
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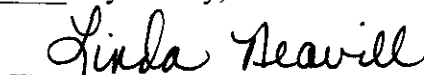
**STATE OF KENTUCKY)
)
COUNTY OF CLARK)**

David G. Eames, being duly sworn, states that he has read the foregoing prepared testimony and that he would respond in the same manner to the questions if so asked upon taking the stand, and that the matters and things set forth therein are true and correct to the best of his knowledge, information and belief.



David G. Eames

Subscribed and sworn before me on this 7th day of July, 2003.



Notary Public

My Commission expires:

January 27, 2005

EXHIBIT I

EAST KENTUCKY POWER COOPERATIVE, INC. CAPITAL EXPANSION PLAN BASED ON SUMMER CAPACITIES

(April 2003 IRP vs. April 2003 IRP Adjusted to Include KPE in 2008)

<u>Year</u>	<u>April 2003 IRP</u>		<u>April 2003 IRP Adjusted to Include KPE in 2008</u>	
	<u>CT</u>	<u>Baseload</u>	<u>CT</u>	<u>Baseload</u>
2005	140	268	140	268
2006	70			
2007	140			
2008	70			500
2009	70			
2010				
2011		268	70	
2012			70	
2013	140		70	
2014	70		140	
2015	140		70	
2016	70		140	
2017				
2018		268		268
2019	70		70	
2020	140		140	
2021	70		70	
2022	140		140	
Totals	1,330	804	1,120	1036

EXHIBIT I (Continued)

EAST KENTUCKY POWER COOPERATIVE, INC. REVENUE REQUIREMENTS

(April 2003 IRP vs. April 2003 IRP Adjusted to Include KPE in 2008)

Year	<u>April 2003 IRP</u>		<u>April 2003 IRP Adjusted to Include KPE in 2008</u>	
	(\$000)	PV @ ■■■% (\$000)	(\$000)	PV @ ■■■% (\$000)
2003	■■■■■	■■■■■	■■■■■	■■■■■
2004	■■■■■	■■■■■	■■■■■	■■■■■
2005	■■■■■	■■■■■	■■■■■	■■■■■
2006	■■■■■	■■■■■	■■■■■	■■■■■
2007	■■■■■	■■■■■	■■■■■	■■■■■
2008	■■■■■	■■■■■	■■■■■	■■■■■
2009	■■■■■	■■■■■	■■■■■	■■■■■
2010	■■■■■	■■■■■	■■■■■	■■■■■
2011	■■■■■	■■■■■	■■■■■	■■■■■
2012	■■■■■	■■■■■	■■■■■	■■■■■
2013	■■■■■	■■■■■	■■■■■	■■■■■
2014	■■■■■	■■■■■	■■■■■	■■■■■
2015	■■■■■	■■■■■	■■■■■	■■■■■
2016	■■■■■	■■■■■	■■■■■	■■■■■
2017	■■■■■	■■■■■	■■■■■	■■■■■
2018	■■■■■	■■■■■	■■■■■	■■■■■
2019	■■■■■	■■■■■	■■■■■	■■■■■
2020	■■■■■	■■■■■	■■■■■	■■■■■
2021	■■■■■	■■■■■	■■■■■	■■■■■
2022	■■■■■	■■■■■	■■■■■	■■■■■
		■■■■■ * PV		■■■■■ * PV

* Present value of revenue requirements using EKPC's discount rate of ■■■% and a base year of 2003.

EXHIBIT II

Excess Generation With And Without KPE									
	With KPE			Without KPE			Increase With KPE		
<u>Year</u>	<u>MWh</u>	<u>Hours</u>	<u>MW/Hr</u>	<u>MWh</u>	<u>Hours</u>	<u>MW/Hr</u>	<u>MWh</u>	<u>Hours</u>	<u>MW/Hr</u>
2008	211,985	1,925	110	9,089	371	24	202,896	1,554	131
2009	204,936	1,954	105	3,595	292	12	201,341	1,662	121
2010	184,724	1,706	108	3,269	234	14	181,455	1,472	123
2011	163,188	1,630	100	20,019	616	32	143,169	1,014	141
2012	150,976	1,512	100	29,149	763	38	121,828	749	163
2013	130,203	1,399	93	20,433	657	31	109,770	742	148
2014	119,994	1,443	83	14,263	484	29	105,731	959	110
2015	96,251	1,300	74	9,023	389	23	87,229	911	96
2016	84,035	1,323	64	4,185	260	16	79,850	1,063	75
2017	62,654	1,205	52	2,254	208	11	60,400	997	61
2018	92,961	1,195	78	11,011	429	26	81,950	766	107
2019	80,316	1,125	71	12,830	460	28	67,486	665	101
2020	61,199	1,053	58	9,648	353	27	51,551	700	74
2021	53,991	965	56	4,736	262	18	49,255	703	70
2022	41,389	816	51	3,161	209	15	38,228	607	63

EXHIBIT III

Comparison of Estimated KPE Energy Price and Forecasted Market Prices

Year	Estimated KPE Price	Average Forecasted Market Price
2008		
2009		
2010		
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		

EXHIBIT IV

ELECTRIC ENERGY AND CAPACITY SALES AGREEMENT

by and between

ENERGY SERVICES AND TECHNICAL SUPPORT, INC.
(a corporate entity in the Commonwealth of Kentucky)

and

EAST KENTUCKY POWER COOPERATIVE
(a corporate entity in the Commonwealth of Kentucky)

dated as of

Nov 16, 2001

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ELECTRIC ENERGY AND CAPACITY SALES AGREEMENT

ELECTRIC ENERGY AND CAPACITY SALES AGREEMENT, made and entered into as of this 16th day of Nov., 2001, by and between **ENERGY SERVICES AND TECHNICAL SUPPORT, INC.**, a Kentucky corporation with offices at 308 Main Street, P.O. Box 1361, Paintsville, KY 41240, and **EAST KENTUCKY POWER COOPERATIVE**, a Kentucky corporation with offices at 4775 Lexington Road, P.O. Box 707, Winchester, Kentucky 40392.

BACKGROUND STATEMENT

A. **ENERGY SERVICES AND TECHNICAL SUPPORT** will be the owner/operator of an electric generating facility in Johnson County, Kentucky, designated as the Kentucky Energy Project (the "Plant"). **ENERGY SERVICES AND TECHNICAL SUPPORT** will permit, design, procure necessary equipment, construct, and place into service the Plant by November 1, 2002.

B. The Plant has an estimated net generating capacity of approximately 105 megawatts ("MW") of which 75 MW is to be sold to **EAST KENTUCKY POWER COOPERATIVE**, and its source of fuel is recycled and refined oil product (GE grade #2 fuel) to be provided by **ENERGY SERVICES AND TECHNICAL SUPPORT**.

C. **EAST KENTUCKY POWER COOPERATIVE** is in the business of generating and transmitting electric power and energy and purchases electricity, gas, and other energy-related commodities and services for its wholesale electric service to its member customers in Kentucky. **EAST KENTUCKY POWER COOPERATIVE** desires to purchase up to 75 MW of electric capacity and associated energy that the Plant generates.

D. **ENERGY SERVICES AND TECHNICAL SUPPORT** desires to sell and deliver up to 75 MW of the electric capacity and associated energy to **EAST KENTUCKY POWER COOPERATIVE** for a term commencing on the date hereof and continuing through the thirtieth anniversary of Commercial Operation of the Plant, or until mutually terminated by **EAST KENTUCKY POWER COOPERATIVE** and **ENERGY SERVICES AND TECHNICAL SUPPORT**.

STATEMENT OF AGREEMENT

NOW, THEREFORE, ENERGY SERVICES AND TECHNICAL SUPPORT and **EAST KENTUCKY POWER COOPERATIVE**, for themselves, their successors and assigns, in consideration of the foregoing and of the representations, covenants, warranties, and agreements hereinafter set forth, hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Defined Terms.

The following terms shall have the meanings set forth in this ARTICLE, except where the context clearly requires otherwise:

“Additional Capacity and Energy” means capacity and associated energy from the Plant in excess of the Capacity Entitlement and associated energy, which may be marketed by ENERGY SERVICES AND TECHNICAL SUPPORT, subject to the right of first refusal of EAST KENTUCKY POWER COOPERATIVE, as provided in Section 8.3.

“Affiliate” shall mean, for any person, (a) any other person which directly or indirectly controls, or is under common control with, or is controlled by, such person. As used in this definition, “control” (including, with its correlative meanings “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction, of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), provided that, in any event, any person which owns directly or indirectly 50% or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation or 50% or more of the partnership or other ownership interests of any other person (other than as a limited partner of such other Person) will be deemed to control such corporation or other person.

“Agreement” or “Electric Energy And Capacity Sales Agreement” means this agreement, including all exhibits, annexes, and schedules attached hereto and made a part hereof, as amended from time to time.

“Annual Energy Quantity” shall have the meaning defined in Section 4.1.2.

“Availability Factor” shall have the meaning prescribed in Section 6.3.

“Bonds” means any bonds, notes, or other obligations issued by or for the benefit of ENERGY SERVICES AND TECHNICAL SUPPORT to finance or refinance the Plant.

“Bondholders” means the registered owners from time to time of the Bonds.

“Business Day” means any day other than a Saturday, Sunday or a day which is an U.S. federal bank holiday.

“Capacity Charge” shall have the meaning ascribed thereto by Section 5.2 hereof.

“Capacity Entitlement” shall mean 75 MW of the output of the Plant.

“Contract Year” shall mean a one year period first commencing on the date Commercial Operation of the Plant is achieved, and subsequent years commencing on the anniversary of such date.

“Commercial Operation” means the reliable operation of the Plant to produce electric energy and capacity, the reliable delivery of electric energy and capacity to EAST KENTUCKY POWER COOPERATIVE at the Delivery Point and the satisfaction of each of the criteria in Exhibit C.

“Delay in Construction” shall have the meaning provided in Section 6.1.

“Delivery Point” means the high side voltage terminals of the generator step-up transformers.

“Disclosure Certificate” means the Continuing Disclosure Certificate executed by EAST KENTUCKY POWER COOPERATIVE and to be dated the date of issuance and delivery of the Bonds, as originally executed and as it may be amended from time to time in accordance with its terms.

“EAST KENTUCKY POWER COOPERATIVE” means a corporate entity created under the laws of the Commonwealth of Kentucky, and any successor or assignee.

“Energy Charge” shall have the meaning ascribed thereto by Section 5.1 hereof.

“Energy Price ” means the following: EAST KENTUCKY POWER COOPERATIVE will pay \$29.50/MWh, the Base Energy Price, for the first 12 Months after the Plant achieves Commercial Operation. On the 13th Month following the Month in which the Plant achieves Commercial Operation and each anniversary thereafter, the Base Energy Price shall be adjusted by the lesser of (i) fifty percent of the annual percentage change in the Consumer Price Index (all urban) during the previous 12 month period or (ii) the annual change in the retail price of electricity (all sectors) in the Commonwealth of Kentucky as published by the Energy Information Administration of the U.S. Department of Energy. The adjustments used will be restricted utilizing an upper limit adjustment of no more than a 1% per year increase, and a lower limit adjustment not to exceed a 1% per year decrease.

“FERC” means the Federal Energy Regulatory Commission or any successor governmental agency with substantially the same function and authority.

“*Force Majeure*” means an event or occurrence specified as a *Force Majeure* event in ARTICLE 13 hereof.

“Indenture” means any trust indenture or trust agreement securing Bonds, as the same may be supplemented and amended from time to time.

“Interconnection Facilities” means all equipment and facilities owned by EAST KENTUCKY POWER COOPERATIVE on ENERGY SERVICES AND TECHNICAL SUPPORT’s site located on the EAST KENTUCKY POWER COOPERATIVE side of the

Delivery Point as required to enable ENERGY SERVICES AND TECHNICAL SUPPORT to deliver the Maximum Net Capacity to EAST KENTUCKY POWER COOPERATIVE.

“Maximum Net Capacity” means the maximum net capacity output that the Plant is capable of generating instantaneously, not to exceed 105 MW.

“Minimum Energy Quantity” shall have the meaning provided in Section 4.1.3.

“Month” means the period beginning at 12:00 midnight, Eastern Standard Time on the first day of a calendar Month and ending at 11:59:59 p.m., Eastern Standard Time on the last day of the same calendar Month.

“MWh” means megawatt hours.

“NERC” means North American Electric Reliability Council.

“Net Energy Output” means the electric energy associated with the Capacity Entitlement from the Plant, not to exceed 75 MW, sold to EAST KENTUCKY POWER COOPERATIVE pursuant to this Agreement.

“Outage” means any outage of the Plant that fully or partially curtails the Plant’s ability to deliver Net Energy Output.

“Peak Hours” means the 16 contiguous hours every day beginning with the hour ending 0700 through the hour ending 2200.

“Peak-Month Period” means the defined Peak Hours during every calendar Month except March, April, and October.

“Plant” means the electrical generating units operated by ENERGY SERVICES AND TECHNICAL SUPPORT, designated as the Kentucky Energy Project, and located at Johnson County, Kentucky together with appurtenant facilities and structures as further described in EXHIBIT B.

“Prime Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), or (b) the maximum rate of interest permitted by applicable law.

“Prudent Utility Practice” means the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or the practices, methods, and acts which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Prudent Utility Practice does not require the use of the optimum practice, method or

act, but only requires the use of acceptable practices, methods or acts generally accepted in the region of the East Central Area Reliability Coordination Agreement.

“Ramp Rate” means the physical capability of the Plant as defined by the Operating Performance Criteria shown on Exhibit A to accurately either increase or decrease generation, expressed in megawatts per minute, in response to electronic signals.

“Site” shall mean the ENERGY SERVICES AND TECHNICAL SUPPORT property made available to EAST KENTUCKY POWER COOPERATIVE at or adjacent to the Plant for the location of the Interconnection Facilities.

“Term” has the meaning assigned to such term in Section 3.1 hereof.

“Trustee” means the trustee or the co-trustee of the time serving, as such under the Indenture.

“Unscheduled Energy” means that portion of the energy associated with the Capacity Entitlement, or Additional Capacity which EAST KENTUCKY POWER COOPERATIVE has agreed to purchase on a firm basis, which has not been scheduled by EAST KENTUCKY POWER COOPERATIVE on a day-ahead basis, but which may be scheduled on at least one hour advance notice, pursuant to Section 8.3.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of EAST KENTUCKY POWER COOPERATIVE.

EAST KENTUCKY POWER COOPERATIVE hereby represents and warrants to ENERGY SERVICES AND TECHNICAL SUPPORT as follows:

(A) EAST KENTUCKY POWER COOPERATIVE is a corporate entity in the Commonwealth of Kentucky duly organized and existing in good standing under the laws of the Commonwealth of Kentucky and duly qualified to transact business in the Commonwealth of Kentucky;

(B) EAST KENTUCKY POWER COOPERATIVE possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein;

(C) EAST KENTUCKY POWER COOPERATIVE’s execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, its organizational documents; this Agreement has been duly executed and delivered in its name on behalf of its officers duly authorized; and this Agreement constitutes the legal, valid, binding, and enforceable agreement of EAST KENTUCKY POWER COOPERATIVE;

(D) EAST KENTUCKY POWER COOPERATIVE's execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under, any agreement, lease, or instrument to which it is a party or by which it or any of its properties may be bound or affected; and

(E) No suit, action, or arbitration, or legal, administrative, or other proceeding is pending or has been threatened against EAST KENTUCKY POWER COOPERATIVE that would affect the validity or enforceability of this Agreement or the ability of EAST KENTUCKY POWER COOPERATIVE to fulfill its commitments hereunder, or that could result in a material adverse change in the business or financial condition of EAST KENTUCKY POWER COOPERATIVE.

2.2 Representations and Warranties of ENERGY SERVICES AND TECHNICAL SUPPORT.

ENERGY SERVICES AND TECHNICAL SUPPORT hereby represents and warrants to EAST KENTUCKY POWER COOPERATIVE as follows:

(A) ENERGY SERVICES AND TECHNICAL SUPPORT is a company duly organized and existing in good standing under the laws of the State of Kentucky and duly qualified to transact business in the State of Kentucky, and is wholly owned by ENERGY SERVICES & TECHNICAL SUPPORT, INC.;

(B) ENERGY SERVICES AND TECHNICAL SUPPORT possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein;

(C) ENERGY SERVICES AND TECHNICAL SUPPORT's execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, its organizational documents; this Agreement has been duly executed and delivered in its name and behalf by its officers duly authorized; and this Agreement constitutes the legal, valid, binding, and enforceable agreement of ENERGY SERVICES AND TECHNICAL SUPPORT;

(D) ENERGY SERVICES AND TECHNICAL SUPPORT's execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under, any agreement, Lease, or instrument to which it is a party or by which it or any of its properties may be bound or affected; and

(E) No suit, action, or arbitration, or legal, administrative, or other proceeding is pending or has been threatened against ENERGY SERVICES AND TECHNICAL SUPPORT that would affect the validity or enforceability of this Agreement or the ability of ENERGY SERVICES AND TECHNICAL SUPPORT to fulfill its commitments hereunder, or that could result in a material adverse change in the business or financial condition of ENERGY SERVICES AND TECHNICAL SUPPORT.

ARTICLE 3. TERM

3.1 General.

The term of this Agreement shall commence on the date hereof, and shall end at 11:59:59 p.m., Eastern Standard Time, on the thirtieth anniversary of Commercial Operation of the Plant, unless earlier terminated in accordance with the provisions of this Agreement; provided, however, that the effectiveness of this Agreement is subject to the terms of Section 15.4, hereinbelow, and provided that the obligations of the Parties relating to transactions arising prior to the date of termination shall survive any such termination.

3.2 Suspension.

Notwithstanding any other provision of this Agreement, ENERGY SERVICES AND TECHNICAL SUPPORT and EAST KENTUCKY POWER COOPERATIVE shall each have the right to suspend the effectiveness of this Agreement, because of or due to the occurrence of a *Force Majeure* in accordance with ARTICLE 13 hereof.

ARTICLE 4. SUPPLY OF CAPACITY AND ENERGY

4.1 EAST KENTUCKY POWER COOPERATIVE Rights and Obligations.

Subject to the terms and conditions of this Agreement and for the Term of this Agreement EAST KENTUCKY POWER COOPERATIVE shall have the following rights and obligations regarding the scheduling and receiving of capacity and energy from the Plant.

4.1.1 Capacity Entitlement.

EAST KENTUCKY POWER COOPERATIVE is entitled to and will pay for the Capacity Entitlement of 75 MW of Plant capacity, subject to the provisions of Section 8.5, hereinbelow.

4.1.2 Required Minimum Annual Energy Take.

EAST KENTUCKY POWER COOPERATIVE is required to take and pay for a minimum Annual Energy Quantity of 194,220 MWh for each Contract Year, subject to the provisions of Section 8.5, hereinbelow. The minimum Annual Energy Quantity purchase and supply amounts shall be satisfied by any purchases of replacement capacity and/or energy by EAST KENTUCKY POWER COOPERATIVE for which compensation is provided pursuant to Section 6.2, hereinbelow. The Annual Energy Quantity shall not be satisfied by purchases of Unscheduled Energy by EAST KENTUCKY POWER COOPERATIVE at a renegotiated price, pursuant to Section 4.1.6. The Annual Energy Quantity shall be reduced on a pro-rata basis for each day that energy delivery or acceptance is excused by an event of *Force Majeure*, provided that any such reductions in the Annual Energy Quantity will be made up over the next three Contract Years following the year of such reductions.

4.1.3 Required Minimum Hourly Energy Take.

EAST KENTUCKY POWER COOPERATIVE is required to take a Minimum Energy Quantity of 5 MWh per hour whenever the Plant is operating and supplying power to the Delivery Point.

4.1.4 Unscheduled Energy.

EAST KENTUCKY POWER COOPERATIVE has the right to and may schedule any quantity of Unscheduled Energy, up to the amount of energy associated with the Capacity Entitlement plus any Additional Capacity which it has agreed to purchase, by revising the energy schedule on at least one hour prior notice pursuant to Section 8.3 hereof, regardless of any previous sales to others by ENERGY SERVICES AND TECHNICAL SUPPORT.

4.1.5 Payment.

The rate and terms of payment by EAST KENTUCKY POWER COOPERATIVE for the capacity and energy purchased under this Agreement are set forth in ARTICLE 5 hereof.

4.1.6 Optional Additional Capacity and Energy.

EAST KENTUCKY POWER COOPERATIVE will have the "right of first refusal" for the purchase of Additional Capacity and Energy from the Plant, in excess of the Capacity Entitlement, and for the renegotiation of the price of any Unscheduled Energy, on mutually agreed upon terms.

4.2 ENERGY SERVICES AND TECHNICAL SUPPORT Rights and Obligations.

Subject to the terms and conditions of this Agreement and for the Term of this Agreement ENERGY SERVICES AND TECHNICAL SUPPORT shall have the following rights and obligations regarding the scheduling and providing of capacity and energy from the Project.

4.2.1 Capacity Obligation.

ENERGY SERVICES AND TECHNICAL SUPPORT is required to make the 75 MW Capacity Entitlement and associated energy, and any other capacity for which the Parties have agreed to terms for purchase and sale, available to EAST KENTUCKY POWER COOPERATIVE at all times, pursuant to the scheduling provisions of Sections 8.3 and 8.4 hereof, and subject to the provisions of Section 8.5, hereinbelow.

4.2.2 Availability Guarantee.

ENERGY SERVICES AND TECHNICAL SUPPORT guarantees to provide the Annual Energy Quantity and that the 75 MW Capacity Entitlement and associated energy, and any other capacity and energy for which the Parties have agreed to terms for purchase and sale, will be available pursuant to Section 6.3 hereof, and subject to the provisions of Section 8.5, hereinbelow. If it fails to meet the availability guarantee, it will make EAST KENTUCKY POWER COOPERATIVE whole. ENERGY SERVICES AND TECHNICAL SUPPORT will provide a performance bond to backup such guarantee,

pursuant to Section 6.2 hereof.

4.2.3 Excess Capacity and Energy Sales.

ENERGY SERVICES AND TECHNICAL SUPPORT may sell capacity and energy that is not being utilized by EAST KENTUCKY POWER COOPERATIVE to others, pursuant to the following provisions:

**4.2.3.1 EAST KENTUCKY POWER COOPERATIVE Rights to
Unscheduled Energy.**

If EAST KENTUCKY POWER COOPERATIVE subsequently schedules Unscheduled Energy, by revising the energy schedule on at least one hour prior notice pursuant to Section 8.3, herein, ENERGY SERVICES AND TECHNICAL SUPPORT must recall any sales to other Parties, if required, to meet such revised schedule, up to the amount of energy associated with the Capacity Entitlement plus any Additional Capacity that EAST KENTUCKY POWER COOPERATIVE has agreed to purchase on a firm basis.

**4.2.3.2 Additional Capacity and Energy Offered to EAST KENTUCKY
POWER COOPERATIVE.**

ENERGY SERVICES AND TECHNICAL SUPPORT will give EAST KENTUCKY POWER COOPERATIVE "right of first refusal" to renegotiate the price of any Unscheduled Energy, and to purchase Additional Capacity and Energy at a mutually agreed upon price, pursuant to the procedures provided in Section 8.3, herein.

4.2.3.3 Revenues from Excess Capacity and Energy Sales.

ENERGY SERVICES AND TECHNICAL SUPPORT is entitled to all revenues from the sales of energy or capacity from the Plant in excess of the capacity and energy scheduled by EAST KENTUCKY POWER COOPERATIVE at least one hour prior to the hour of delivery, pursuant to Section 8.3 hereof, without any right or credit or set-off, whether sale is to EAST KENTUCKY POWER COOPERATIVE or another person.

4.3 Payment.

The rate and terms of payment by EAST KENTUCKY POWER COOPERATIVE for the purchased energy and capacity are set forth in ARTICLE 5 hereof.

ARTICLE 5. PAYMENT

5.1 Energy Charge.

For the term of this Agreement after Commercial Operation, EAST KENTUCKY POWER COOPERATIVE shall pay to ENERGY SERVICES AND TECHNICAL SUPPORT, each Month (or a portion thereof) in accordance with this ARTICLE, an amount equal to the product of the applicable Energy Price and the quantum of energy associated with the Annual Energy Quantity and any other energy for which the Parties have not agreed to a different energy

price, which is scheduled and received by EAST KENTUCKY POWER COOPERATIVE during the subject Month. The energy charges for any energy for which the Parties have negotiated the price, including Additional Energy purchased by EAST KENTUCKY POWER COOPERATIVE, which is scheduled and received during such Month, shall be as agreed by the Parties hereto.

5.2 Capacity Charge.

Each Month commencing with the Month immediately following the Month in which Commercial Operation is achieved, EAST KENTUCKY POWER COOPERATIVE shall pay to ENERGY SERVICES AND TECHNICAL SUPPORT an Amount equal to \$3.50 per kW Month of the Capacity Entitlement, or that portion of the Capacity Entitlement which can be delivered by interconnection facilities under construction, as provided in Section 8.5, hereinbelow, plus an agreed upon adder that reflects the cost of the performance security instrument, pursuant to Section 6.2, hereinbelow. The cost of the adder shall be \$0.40 per kW Month of the Capacity Entitlement for the first year following Commercial Operation. The capacity charges for any Additional Capacity purchased by EAST KENTUCKY POWER COOPERATIVE on a firm basis during any Month shall be as agreed by the Parties hereto, and shall not include the performance security adder.

5.3 Invoicing.

ENERGY SERVICES AND TECHNICAL SUPPORT shall prepare and deliver to EAST KENTUCKY POWER COOPERATIVE, on or before the 15th day of each Month, invoices setting forth the monthly payments due pursuant to this ARTICLE 5 with respect to the preceding calendar Month. If either Party discovers an error in the amount of an invoice or a payment made with respect thereto, such Party shall notify the other Party within 60 days of discovery of such error and such error shall be corrected within 30 days of receipt of such notice; provided, however, that neither Party shall be entitled to correction of any such error if notice of such error is not delivered in writing to the other Party within ninety days of the applicable invoice or payment.

5.4 Payments; Due Date; Overdue Charges.

All payments due with respect to any such invoice shall be paid in United States dollars by wire transfer or immediately available funds to such account or accounts as shall be designated in writing by ENERGY SERVICES AND TECHNICAL SUPPORT to EAST KENTUCKY POWER COOPERATIVE. EAST KENTUCKY POWER COOPERATIVE shall pay ENERGY SERVICES AND TECHNICAL SUPPORT all amounts due under such invoices on or before 20 days following the receipt of the invoice, provided that if such day is not a Business Day, payment shall be due on the next succeeding Business Day. Any amount remaining unpaid after the time it is due shall thereafter bear interest at a rate equal to the Prime Rate, plus 2% per annum.

ARTICLE 6. OBLIGATIONS OF ENERGY SERVICES AND TECHNICAL SUPPORT

6.1 Plant Design and Construction.

ENERGY SERVICES AND TECHNICAL SUPPORT shall be responsible for obtaining all permits necessary to construct and operate the Plant. ENERGY SERVICES AND TECHNICAL SUPPORT shall procure all equipment necessary for the reliable operation of the Plant, shall cause the Plant to be constructed on a schedule such that the Plant will be in Commercial Operation by November 1, 2002, and shall procure and maintain performance security for its liquidated damages obligation, as provided herein. Prior to Commercial Operation, or upon any termination of this Agreement pursuant to SECTION 14.3, hereinbelow, ENERGY SERVICES AND TECHNICAL SUPPORT shall pay to EAST KENTUCKY POWER COOPERATIVE liquidated damages due to delay in construction, of \$25,000 for each day that Commercial Operation is delayed, starting on January 1, 2003. No liquidated damages shall be due for any day during which EAST KENTUCKY POWER COOPERATIVE facilities cannot receive any of the Plant's output, and further provided that ENERGY SERVICES AND TECHNICAL SUPPORT's total cumulative aggregate liability for liquidated damages under this Section 6.1 shall not exceed a cap of \$7,000,000. ENERGY SERVICES AND TECHNICAL SUPPORT will staff the Plant, will start-up and test the Plant and will operate the Plant during the Term of this Agreement.

6.2 Performance Security.

Unless the Parties agree otherwise, ENERGY SERVICES AND TECHNICAL SUPPORT shall provide, pursuant to Section 6.2.3 herein, every year for the duration of the Agreement, at its out of pocket cost, a performance bond or other comparable security for performance acceptable to EAST KENTUCKY POWER COOPERATIVE, and agrees to indemnify and hold EAST KENTUCKY POWER COOPERATIVE harmless against its additional costs of replacement power in the event ENERGY SERVICES AND TECHNICAL SUPPORT fails to deliver scheduled power at a rate equal to or greater than the Availability Factor guaranteed in Section 6.3 for any reason not excused as a *Force Majeure* event, or should an Event of Default pursuant to Section 14.3 occur. The cost of such performance security is included in the Capacity Charge. Damages for such failures to deliver power will be the total actual Additional Out of Pocket Costs incurred by EAST KENTUCKY POWER COOPERATIVE to procure replacement power. If EAST KENTUCKY POWER COOPERATIVE facilities required for the receipt of energy from ENERGY SERVICES AND TECHNICAL SUPPORT are out of service at the time of such a plant outage, no damages shall be due EAST KENTUCKY POWER COOPERATIVE until it is again prepared to receive such energy. The performance security under this ARTICLE shall be a minimum of \$10,000,000. The Parties agree to mutually review and negotiate the performance security price and coverage requirements annually.

6.2.1 Additional Out of Pocket Costs.

Additional Out of Pocket Costs means the price at which EAST KENTUCKY POWER COOPERATIVE, acting in a commercially reasonable manner, purchases replacement power, or the cost of generating such replacement power, for any failure of ENERGY SERVICES AND TECHNICAL SUPPORT to comply with the indemnity

provided in Section 6.2 herein, less the Energy Charge applicable to the non-delivered energy, pursuant to Section 5.1, hereinabove, plus (i) costs reasonably incurred by EAST KENTUCKY POWER COOPERATIVE in purchasing such replacement power and (ii) additional transmission charges, if any, reasonably incurred by EAST KENTUCKY POWER COOPERATIVE, or at EAST KENTUCKY POWER COOPERATIVE's option, the positive difference between the market price for such replacement power as determined by EAST KENTUCKY POWER COOPERATIVE in a commercially reasonable manner, and the applicable Energy Charge for such non-delivered power, pursuant to Section 5.1.

6.2.2 Invoice Procedure.

If ENERGY SERVICES AND TECHNICAL SUPPORT fails to deliver scheduled power pursuant to Sections 6.2 and 6.3, then ENERGY SERVICES AND TECHNICAL SUPPORT shall pay EAST KENTUCKY POWER COOPERATIVE, on the date payment would otherwise be due from EAST KENTUCKY POWER COOPERATIVE in respect of the Month in which the failure occurred, unless another payment schedule is agreed to by the Parties, an amount for such deficiency equal to EAST KENTUCKY POWER COOPERATIVE's calculated Additional Out of Pocket Costs in regard to such non-deliveries of power. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

6.2.3 Acceptance of Performance Security.

ENERGY SERVICES AND TECHNICAL SUPPORT will provide performance security pursuant to Section 6.1, to be effective on January 1, 2003, and pursuant to Section 6.2, to be effective on the earlier of January 1, 2003 or the date Commercial Operation of the Plant is achieved, acceptable in form and from a surety or financial institution acceptable to EAST KENTUCKY POWER COOPERATIVE at its sole discretion, within 30 days of execution of this Agreement or EAST KENTUCKY POWER COOPERATIVE will have the right to terminate this Agreement upon 10 days advance notice to ENERGY SERVICES AND TECHNICAL SUPPORT.

6.3 Operating Performance Criteria.

The Plant shall be capable of operation at the limits specified in Exhibit A. ENERGY SERVICES AND TECHNICAL SUPPORT shall operate and maintain the Plant in accordance with all applicable codes, standards, and regulations mandated by law and Prudent Utility Practice. ENERGY SERVICES AND TECHNICAL SUPPORT covenants that the Plant will have an annual Availability Factor of at least 85% and a monthly Availability Factor of at least 97% for each Month of the Peak-Month Period, or ENERGY SERVICES AND TECHNICAL SUPPORT will hold EAST KENTUCKY POWER COOPERATIVE harmless against its additional costs of replacement power. Energy delivered by ENERGY SERVICES AND TECHNICAL SUPPORT to the Delivery Point shall be in the form of three-phase alternating current, at a frequency of approximately 60-hertz, initially at a nominal voltage of 69 kV, to be converted to 138 kV at a future date, in accordance with specifications in Exhibit A. ENERGY SERVICES AND TECHNICAL SUPPORT will provide adequate facilities for proper synchronization of the Plant such that synchronization is accomplished without causing

undesirable harmful currents, surges, or voltage dips on the transmission system of EAST KENTUCKY POWER COOPERATIVE. Energy delivered by the Plant will not cause unusual disturbances or fluctuations on the transmission system of EAST KENTUCKY POWER COOPERATIVE.

6.4 Availability Factor Calculation.

The Availability Factor shall be calculated each Month based on the availability of the Plant. The Monthly Availability Factor shall be determined as follows:

$$MAF = 1 - \left\{ \left[\sum_{i = \text{Peak Hours in Month}} (SE_i - DE_i) / TH \right] / CE + ME / TH / CE \right\}$$

Where	<p>MAF is Monthly Availability Factor</p> <p>SE_i is Scheduled Energy in hour i</p> <p>DE_i is Delivered Energy in hour i</p> <p>TH is the total number of Peak Hours in subject Month</p> <p>CE is Capacity Entitlement</p> <p>i is each defined Peak Hour in the subject Month</p> <p>ME is Maintenance Energy defined as the sum of Scheduled and Non-scheduled Maintenance Days X Peak Hours/day X CE</p>
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The Annual Availability Factor shall be determined as follows:

$$AAF = 1 - \left\{ \left[\sum_{i = \text{Peak Hours in Year}} (SE_i - DE_i) / TH \right] / CE + ME / TH / CE \right\}$$

Where	<p>AAF is Annual Availability Factor</p> <p>SE_i is Scheduled Energy in hour i</p> <p>DE_i is Delivered Energy in hour i</p> <p>TH is the total number of Peak Hours in subject Contract Year</p> <p>CE is Capacity Entitlement</p> <p>i is each Peak Hour in the subject Contract Year</p> <p>ME is Maintenance Energy defined as the sum of Scheduled and Non-scheduled Maintenance Days X Peak Hours/day X CE</p>
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6.5 Plant Operation and Maintenance.

ENERGY SERVICES AND TECHNICAL SUPPORT shall be responsible for the cost of operation and maintenance of the Plant, which shall be performed and be in accordance with Prudent Utility Practice and be in compliance with all applicable environmental laws and regulations. ENERGY SERVICES AND TECHNICAL SUPPORT shall be responsible for maintaining the physical security of the Plant.

6.6 Operating Representatives.

EAST KENTUCKY POWER COOPERATIVE and ENERGY SERVICES AND TECHNICAL SUPPORT will each appoint an Operating Representative who will have the responsibility and authority to act on matters concerning the delivery of capacity and energy from the Plant to EAST KENTUCKY POWER COOPERATIVE's Interconnection Facilities. Such matters may include coordination of maintenance scheduling, scheduling of capacity and energy from the Plant, unit or interconnection equipment outage notification, equipment testing, and other operational matters.

6.7 Voltage Regulation.

The Plant shall be operated at all times with its excitation systems in the automatic voltage regulation mode, unless approved otherwise by EAST KENTUCKY POWER COOPERATIVE, and at a voltage level, subject to Plant design capabilities, as directed by EAST KENTUCKY POWER COOPERATIVE.

6.8 Automatic Generator Control.

The Plant shall be equipped with automatic control systems capable of accepting and responding to remote automatic generation control signals from EAST KENTUCKY POWER COOPERATIVE that specify the desired output of the Plant within the design parameters as specified in Exhibit A. ENERGY SERVICES AND TECHNICAL SUPPORT shall operate such equipment when requested by EAST KENTUCKY POWER COOPERATIVE.

6.9 Approval for Closing Breakers.

ENERGY SERVICES AND TECHNICAL SUPPORT shall obtain prior approval of EAST KENTUCKY POWER COOPERATIVE for any closing of main circuit breakers and high voltage switches of the Plant, whether for testing or for operations, and of any planned outage of, or limitation on, generation by the Plant, which approval shall not be unreasonably withheld.

6.10 Required Disconnection.

ENERGY SERVICES AND TECHNICAL SUPPORT shall open the electrical connection between the Plant and the Interconnection Facilities when requested by EAST KENTUCKY POWER COOPERATIVE for any of the following reasons:

(a) To facilitate maintenance or repair of any of EAST KENTUCKY POWER COOPERATIVE's facilities or system or of ENERGY SERVICES AND TECHNICAL SUPPORT's facilities being maintained by EAST KENTUCKY POWER COOPERATIVE which reasonably requires such open connection, provided that EAST KENTUCKY POWER COOPERATIVE diligently proceeds with said repairs or maintenance; or

(b) An Emergency affecting EAST KENTUCKY POWER COOPERATIVE's system, which requires such open connection, and EAST KENTUCKY POWER COOPERATIVE diligently proceeds to correct or remedy said Emergency.

While all reasonable efforts will be made to provide prior notice, EAST KENTUCKY POWER COOPERATIVE reserves the right to require opening of the electrical connection or to open the

connection itself (either manually or with protective relay equipment) without prior notice for an Emergency. Where prior notice is not given, EAST KENTUCKY POWER COOPERATIVE will promptly notify ENERGY SERVICES AND TECHNICAL SUPPORT of all openings of the electrical connections. ENERGY SERVICES AND TECHNICAL SUPPORT shall likewise exercise reasonable effort to provide prior notice to EAST KENTUCKY POWER COOPERATIVE of all unscheduled openings (either manually or with protective relay equipment) of the connection and all unscheduled complete or partial outages of the Plant and, where prior notice is not given, shall promptly notify EAST KENTUCKY POWER COOPERATIVE of all such openings of the connection and all such partial or complete outages of the Plant. Once the cause requiring the opening of the electrical connection has been removed, then the Parties will forthwith close the electrical connection between the Plant and the Interconnection Facilities.

6.11 Reliability Standards.

ENERGY SERVICES AND TECHNICAL SUPPORT shall conform to all applicable planning and operating standards of the East Central Area Reliability Coordinating Agreement and North American Electric Reliability Council or succeeding organizations.

ARTICLE 7. SUSPENSION OF DELIVERIES
BY ENERGY SERVICES AND TECHNICAL SUPPORT; CONTROL OF PLANT

7.1 Suspensions.

Subject to Section 6.3, ENERGY SERVICES AND TECHNICAL SUPPORT may suspend operation of the Plant or temporarily disconnect it from the Interconnection Facilities whenever and for such periods of time as may be, in the sole discretion of ENERGY SERVICES AND TECHNICAL SUPPORT, necessary for maintenance, emergency, reliability, environmental, or safety reasons, and will coordinate with EAST KENTUCKY POWER COOPERATIVE in order to avoid discretionary outages during peak periods and to minimize any adverse impacts on the EAST KENTUCKY POWER COOPERATIVE system.

7.2 Records.

Each Party shall make available to the other such information relative to the Plant and this Agreement as may be reasonably requested by the other. Both ENERGY SERVICES AND TECHNICAL SUPPORT and EAST KENTUCKY POWER COOPERATIVE shall keep, for a period of not less than 5 years, copies and records of all invoices, receipts, computer printouts, meter readings, and other information relevant to this Agreement.

ARTICLE 8. INTERCONNECTION AND SCHEDULING

8.1 Delivery Point.

ENERGY SERVICES AND TECHNICAL SUPPORT shall deliver capacity and energy to EAST KENTUCKY POWER COOPERATIVE at the Delivery Point, or any other delivery point as to which the Parties may mutually agree. EAST KENTUCKY POWER COOPERATIVE

will construct, at its expense, transmission facilities to integrate the Maximum Net Capacity of the Plant into the EAST KENTUCKY POWER COOPERATIVE system.

8.2 Interconnection Facilities

ENERGY SERVICES AND TECHNICAL SUPPORT shall finance, build, own, operate, and maintain all Interconnection Facilities on its side of the Delivery Point, including the generator step up transformers, necessary for the delivery of the Maximum Net Capacity to EAST KENTUCKY POWER COOPERATIVE. All such facilities are subject to mutual review, and final approval by EAST KENTUCKY POWER COOPERATIVE. EAST KENTUCKY POWER COOPERATIVE will finance, build, own, operate, and maintain a substation and transmission lines on ENERGY SERVICES AND TECHNICAL SUPPORT property to accept the Maximum Net Capacity of the Plant at the Delivery Point. ENERGY SERVICES AND TECHNICAL SUPPORT shall convey appropriate property suitable for such Interconnection Facilities or grant EAST KENTUCKY POWER COOPERATIVE reasonable agreed use of and access to suitable property, all at no cost, as provided in a separate Site lease or deed. In the event of any termination of this Agreement, each Party will continue to own all facilities it has installed and operated, and EAST KENTUCKY POWER COOPERATIVE shall have the right to remove any and all such facilities installed on ENERGY SERVICES AND TECHNICAL SUPPORT property.

8.3 Scheduling.

Prior to 10:00 A.M. each day EAST KENTUCKY POWER COOPERATIVE shall submit a preliminary schedule for energy to ENERGY SERVICES AND TECHNICAL SUPPORT for each hour of the following day; however, EAST KENTUCKY POWER COOPERATIVE may revise the schedule for energy to be delivered in any hour, up or down, by providing ENERGY SERVICES AND TECHNICAL SUPPORT with no less than one hour notice prior to the hour of delivery. The schedule for energy shall comply with the Operating Performance Criteria limits in Exhibit A and shall not exceed the Maximum Net Capacity of the Plant. ENERGY SERVICES AND TECHNICAL SUPPORT shall endeavor to operate the Plant so that the energy delivered for each hour shall equal the schedule for energy for that hour. To the extent that the energy delivered from the Plant exceeds the schedule for energy for that hour, the amount of the excess shall be deducted from the determination of energy delivered during that hour for the purposes of calculating the Energy Payment pursuant to Section 5.1. Any energy not scheduled by EAST KENTUCKY POWER COOPERATIVE at least one hour in advance of the hour of delivery will be available to be sold to the prevailing market and such energy is not subject to being recalled by EAST KENTUCKY POWER COOPERATIVE. ENERGY SERVICES AND TECHNICAL SUPPORT shall give EAST KENTUCKY POWER COOPERATIVE a right of first refusal before making any sale of Unscheduled Energy or Additional Capacity and Energy to any other Party. Terms for the purchase and sale of any Additional Capacity or Energy, or for the renegotiation of the price of Unscheduled Energy, shall be determined by the Parties and documented in writing, and deliveries of such renegotiated Unscheduled Energy or Additional Capacity or Energy shall be scheduled as provided in this Section 8.3.

8.4 Use of EAST KENTUCKY POWER COOPERATIVE Transmission.

ENERGY SERVICES AND TECHNICAL SUPPORT may use available capacity in EAST KENTUCKY POWER COOPERATIVE's transmission system to deliver power and energy to others; provided, however, that such use is properly reserved and scheduled. ENERGY SERVICES AND TECHNICAL SUPPORT will reimburse EAST KENTUCKY POWER COOPERATIVE for such use in accordance with its Open Access Transmission Tariff currently on file with the Federal Energy Regulatory Commission.

8.5 Interconnection Schedule.

Construction of the transmission and interconnection facilities by EAST KENTUCKY POWER COOPERATIVE required to accept the Maximum Net Capacity of the Plant into its transmission grid is expected to be completed in two phases. EAST KENTUCKY POWER COOPERATIVE will make best efforts to complete both phases of construction of such facilities to connect the Plant to its transmission grid with the capability of accepting the Maximum Net Capacity of the Plant prior to November 1, 2003.

EAST KENTUCKY POWER COOPERATIVE anticipates completion of the first phase of construction of such facilities by November 1, 2002. The first phase will include construction of the substation and interconnection facilities necessary to accept output from the plant at a level that is subject to the capability of the existing Skaggs to Thelma 69 kV transmission line. EAST KENTUCKY POWER COOPERATIVE anticipates being able to accept approximately 50 MW of Plant output following completion of the first phase of construction.

The second phase of construction of the transmission and interconnection facilities by EAST KENTUCKY POWER COOPERATIVE will consist of re-building and re-conductoring the Skaggs to Thelma transmission line so that it is capable of accepting the Maximum Net Capacity of the Plant and operating at 138 kV at such time as EAST KENTUCKY POWER COOPERATIVE desires to operate the line at that voltage in the future. After a portion of the re-building and re-conductoring of the transmission line has been completed, such re-built and re-conducted transmission facilities may be capable of accepting the Maximum Net Capacity of the Plant into the EAST KENTUCKY POWER COOPERATIVE transmission grid. EAST KENTUCKY POWER COOPERATIVE will make best efforts to accept up to the Maximum Net Capacity of the Plant during the second phase of construction of the transmission and interconnection facilities when the construction schedule allows and such facilities are capable of accepting the Maximum Net Capacity prior to completion.

ENERGY SERVICES AND TECHNICAL SUPPORT understands that during both phases of construction of the transmission and interconnection facilities and until completion, such facilities will not meet EAST KENTUCKY POWER COOPERATIVE's standard transmission planning reliability criteria.

During such periods when EAST KENTUCKY POWER COOPERATIVE's transmission facilities are not capable of accepting the Maximum Net Capacity of the Plant, ENERGY SERVICES AND TECHNICAL SUPPORT shall be excused from obligations to deliver that portion of the Capacity Entitlement that cannot be accepted by EAST KENTUCKY POWER COOPERATIVE's facilities. Furthermore, the Annual Energy Quantity shall be reduced in proportion to the deficiency in transmission capacity below the Capacity Entitlement, and the Capacity Charge shall be calculated based on the available transmission capacity, for the period of such construction.

ARTICLE 9. METERING

9.1 Telemetry Equipment.

ENERGY SERVICES AND TECHNICAL SUPPORT shall install, to specifications provided by EAST KENTUCKY POWER COOPERATIVE, adequate telemetering and communication equipment to transmit information to EAST KENTUCKY POWER COOPERATIVE from the Plant that will allow EAST KENTUCKY POWER COOPERATIVE to monitor and permit control of ENERGY SERVICES AND TECHNICAL SUPPORT's generation of electric energy, including equipment to provide to EAST KENTUCKY POWER COOPERATIVE continuous telemetry of real power, reactive power, voltage, breaker and switch status, and to control governor set points when the Plant governor is in automatic mode. The communication channel or channels required to transmit these data to EAST KENTUCKY POWER COOPERATIVE's (or assignee) control and dispatch floor and receiving equipment at EAST KENTUCKY POWER COOPERATIVE's (or assignee) end of the communication channel(s) shall be provided and paid for by EAST KENTUCKY POWER COOPERATIVE.

9.2 Energy Measurement.

The electric capacity and energy delivered by ENERGY SERVICES AND TECHNICAL SUPPORT shall be measured by electric watthour meters capable of an accuracy of 99.8 percent. ENERGY SERVICES AND TECHNICAL SUPPORT shall cause the meters to be maintained and tested annually. EAST KENTUCKY POWER COOPERATIVE shall be notified 48 hours prior to the testing of the meters and shall have the right to witness such tests. EAST KENTUCKY POWER COOPERATIVE shall promptly be provided written copies of the results of all tests of the metering equipment certified as true, accurate and complete by ENERGY SERVICES AND TECHNICAL SUPPORT. EAST KENTUCKY POWER COOPERATIVE may request a special test of the metering equipment at any time, and have a representative present at any such test. The expense of such special test shall be borne by EAST KENTUCKY POWER COOPERATIVE if the equipment is found to be inaccurate by less than two percent (2%). If the results of any test indicate that the metering equipment is inaccurate by more than two percent (2%), meter readings shall be corrected for a period extending back to the time such inaccuracy first occurred if such time can be ascertained. If such time is not ascertainable, corrections shall be made for one half of the elapsed time since the previous meter equipment test. If, for any reason ENERGY SERVICES AND TECHNICAL SUPPORT's metering equipment is out of service or out of repair so that the amount of energy delivered to the Delivery Point cannot be ascertained or corrected pursuant to this Section, ENERGY SERVICES AND TECHNICAL SUPPORT and EAST KENTUCKY POWER COOPERATIVE shall jointly estimate the amount of energy delivered during any period when the metering equipment is out of service or out of repair based on deliveries to the Delivery Point made during earlier periods under similar conditions when the metering equipment was in working order. In the event that the metering equipment is found to be inaccurate or out of repair in accordance with the terms of this Section, the compensation payable to ENERGY SERVICES AND TECHNICAL SUPPORT pursuant to the terms of ARTICLE 5, hereof, shall be redetermined utilizing the amount of energy determined pursuant to the terms of this Section. In the event any such redetermination indicates that EAST

KENTUCKY POWER COOPERATIVE owes ENERGY SERVICES AND TECHNICAL SUPPORT additional funds, EAST KENTUCKY POWER COOPERATIVE shall pay ENERGY SERVICES AND TECHNICAL SUPPORT such amounts in immediately available funds within five (5) days from the day of any redetermination agreed upon by the Parties. In the event any such redetermination indicates that ENERGY SERVICES AND TECHNICAL SUPPORT received funds from EAST KENTUCKY POWER COOPERATIVE in excess of the amounts due and payable by EAST KENTUCKY POWER COOPERATIVE in accordance with the terms of ARTICLE 5, hereof, then ENERGY SERVICES AND TECHNICAL SUPPORT shall reimburse to EAST KENTUCKY POWER COOPERATIVE any such excess amount in immediately available funds within five (5) days from the day of any such redetermination agreed upon by the Parties.

9.3 Inspection of Records.

Authorized agents of EAST KENTUCKY POWER COOPERATIVE shall have the right, upon twenty-four (24) hours' notice, during reasonable business hours, to inspect, on ENERGY SERVICES AND TECHNICAL SUPPORT's premises, the records of Net Energy Output generated and delivered to EAST KENTUCKY POWER COOPERATIVE. ENERGY SERVICES AND TECHNICAL SUPPORT may have a representative present during such inspections of records.

9.4 Ownership of Metering Equipment.

At the expiration or termination of this Agreement, all metering, telemetering and communication equipment installed or used at the Plant in connection with this Agreement shall be the property of ENERGY SERVICES AND TECHNICAL SUPPORT.

ARTICLE 10. OUTAGES

ENERGY SERVICES AND TECHNICAL SUPPORT shall report the following information to EAST KENTUCKY POWER COOPERATIVE's (or assignee) control and dispatch floor in accordance with EAST KENTUCKY POWER COOPERATIVE prescribed dispatch procedures; provided, however that if ENERGY SERVICES AND TECHNICAL SUPPORT learns any of the following information earlier than reporting is required under such dispatch procedures, it will report such information as far in advance as possible:

10.1 Outage Duration.

The expected duration of any Outage, including a forced Outage, to be confirmed in writing within forty-eight (48) hours of its occurrence.

10.2 Maintenance Plan.

ENERGY SERVICES AND TECHNICAL SUPPORT's annual planned maintenance plan will be coordinated with EAST KENTUCKY POWER COOPERATIVE, and any changes to such maintenance plan.

10.3 Non-Scheduled Outages.

Non-scheduled maintenance Outages shall be reported immediately upon occurrence along with the estimated duration.

ARTICLE 11. INDEMNIFICATION AND INSURANCE

11.1 Indemnification.

Each Party hereto respectively assumes full responsibility in connection with the electric service supplied hereunder on its side of the Delivery Point and for the wires, devices and appurtenances used in connection therewith. Each Party shall indemnify, save harmless and defend the other (including its respective directors, officers, employees, affiliates and agents) against all claims, demands, judgments, costs, damages, expenses, and other liabilities (including reasonable attorneys' fees) due to loss, damage or injury to person or persons or property in any manner directly or indirectly arising from or connected with responsibilities thus assumed by it, except to the extent caused by the indemnified Party's negligence or willful misconduct.

11.2 Notice and Participation.

If any indemnified Party intends to seek indemnification under this ARTICLE from any indemnifying Party with respect to any action or claim, the indemnified Party shall give the indemnifying Party notice of such claim or action within fifteen (15) days of the commencement of, or actual knowledge by the indemnified Party of, such claim or action, and the indemnifying Party shall have no liability under this ARTICLE for any claim or action to the extent it suffers actual prejudice from the failure by the indemnified Party to provide such notice. The indemnifying Party shall have the right, at its sole cost and expense, to participate in any such claim or action. The indemnified Party shall not compromise or settle any such claim or action without the prior consent of the indemnifying Party, which consent shall not be unreasonably withheld.

11.3 Limitation of Liability.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY NOR ITS EMPLOYEES OR AGENTS SHALL BE LIABLE, WHETHER ARISING OUT OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER CAUSE OF OR FORM OF ACTION WHATSOEVER, FOR ANY INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL COST, EXPENSE OR DAMAGE.

11.4 Independent Parties.

Notwithstanding anything in this Agreement to the contrary, ENERGY SERVICES AND TECHNICAL SUPPORT and EAST KENTUCKY POWER COOPERATIVE are not and shall not be considered to be joint venturers, partners or agents of the other and neither shall have the power to bind or obligate the other.

11.5 Tax Indemnification.

11.5.1 EAST KENTUCKY POWER COOPERATIVE Tax Indemnification.

EAST KENTUCKY POWER COOPERATIVE agrees to indemnify ENERGY SERVICES AND TECHNICAL SUPPORT and save ENERGY SERVICES AND TECHNICAL SUPPORT harmless from and against any and all present and future royalties and taxes, including, without limitation, business transfer taxes, value added taxes, and all other forms of taxes, levies or assessments, whether or not similar or dissimilar to the foregoing, or license fees or charges on the acceptance and use of aggregate Net Energy Output hereunder, that are applicable with respect to property, service or otherwise at and after the Delivery Points.

11.5.2 ENERGY SERVICES AND TECHNICAL SUPPORT Tax Indemnification.

ENERGY SERVICES AND TECHNICAL SUPPORT agrees to indemnify EAST KENTUCKY POWER COOPERATIVE and save EAST KENTUCKY POWER COOPERATIVE harmless from and against any and all present and future royalties and taxes, including, without limitation, business transfer taxes, value added taxes, and all other forms of taxes, levies or assessments, whether or not similar or dissimilar to the foregoing, or license fee or charges on the generation and delivery of energy hereunder, which are applicable with respect to property, services or otherwise up to the Delivery Point.

11.5.3 Insurance Coverage.

At all times during the term of this Agreement, each Party shall, at its sole cost and expense, procure and maintain the following types of insurance coverage:

(a) Property Insurance. "Property Insurance" shall include property, fire, wind, storm, extended coverage, and special extended coverage insurance with respect to any facility or equipment of the Party, located at the Plant or the Site, in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, without limitation, debris removal and demolition), with such additional coverage as the Party may elect or the holder of any fee or leasehold mortgage may require, including, without limitation, earthquake and flood coverage, hazardous materials endorsement, inflation endorsement, sprinkler leakage endorsement and machinery coverage.

(b) General Liability. Commercial general liability insurance against any and all damages and liability, including attorney's fees on account of or arising out of injuries to or the death of any person or damage to property, however occasioned, in, on or about the Plant and the Site in amounts not less than \$5,000,000 for injury or death of one or more persons in a single accident and \$500,000 for damage to property.

(c) Personal Property. Insurance adequate in an amount to cover damage to or replacement of, as necessary, leasehold improvements, trade fixtures, equipment, goods and inventory.

(d) Employers Liability/Workers Compensation. Employer's liability insurance and worker's compensation insurance as required by applicable law.

(e) Other Insurance. Such other insurance in such amounts as may be required by each Party against other insurable hazards as at the time are commonly insured against in case of prudent owners of comparable projects in the area in which the Plant is located.

(f) Form of Insurance/Companies. All such insurance shall be in a form satisfactory to the other Party and carried with companies reasonably acceptable to such, in good standing with the Department of Insurance for the state in which the Plant is located, and have a rating issued by an organization regularly engaged in rating insurance companies (including, specifically, A.M. Best & Company) of not less than two ratings below the top rating. Each Party shall provide the other Party with a Certificate of Insurance showing the other Party as an additional insured except for workers' compensation and employers' liability coverages. The Certificate shall provide for a thirty (30) day written notice to the other Party in the event of cancellation or material change of coverage. Not later than thirty (30) days prior to the expiration of any coverage, renewals of or replacements for such contracts of insurance shall be delivered to the other Party, together with proof of payment of the associated premiums. All deductibles in the above described insurance policies shall be at insuring Party's sole cost and expense.

11.5.4 Party's Right to Obtain Insurance.

If either Party shall fail to maintain any such insurance required hereunder, the other Party may, at its election, after ten (10) days written notice to the defaulting Party, procure the same, it being hereby expressly covenanted and agreed that payment by a Party of any such premium shall not be deemed to waive or release the obligation of the defaulting Party to make payment thereof. In the event that a Party procures any such insurance policy after notice to the other Party, the premium cost thereof shall be immediately reimbursed to such Party by the defaulting Party. A Party's failure to either procure or maintain the insurance required hereunder after five (5) days written notice from the other Party hereunder, shall constitute a default under this Agreement.

ARTICLE 12. ASSIGNMENT

12.1 Absolute Agreements.

This Agreement shall be binding upon the Parties hereto, their successors and assigns. Neither ENERGY SERVICES AND TECHNICAL SUPPORT nor EAST KENTUCKY POWER COOPERATIVE may assign all or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that either Party may assign this Agreement without the other Party's consent if such assignment is made to an Affiliate or to a successor by way of merger, consolidation or the acquisition of substantially all of the assets or ownership interests of such Party, and provided further that EAST KENTUCKY POWER COOPERATIVE may assign this Agreement to the Rural Utilities Service and/or the National Rural Utilities Cooperative Finance

Corporation without such consent. In the event of any assignment (other than collateral assignments contemplated in Section 12.2 hereof), the assignee shall expressly assume the obligations of the assigning Party in writing. An assignment of EAST KENTUCKY POWER COOPERATIVE to an Affiliate or successor permitted hereunder shall be only to an entity that becomes the owner of all or substantially all of EAST KENTUCKY POWER COOPERATIVE's electric generation or transmission system. Any assignment by ENERGY SERVICES AND TECHNICAL SUPPORT permitted hereunder shall be only to an entity with adequate experience in the operation and maintenance of similar generation facilities, and with similar equity investment and financial strength to the current owners. Any assignment in violation of this ARTICLE shall be null and void.

12.2 Collateral Assignments.

The Parties hereto agree and intend that:

(a) The payments to be made hereunder by EAST KENTUCKY POWER COOPERATIVE to ENERGY SERVICES AND TECHNICAL SUPPORT will be assigned and pledged by ENERGY SERVICES AND TECHNICAL SUPPORT to the Trustee for the benefit of the Bondholders pursuant to the Indenture.

(b) Following the issuance of the Bonds, the payments to be made to ENERGY SERVICES AND TECHNICAL SUPPORT by EAST KENTUCKY POWER COOPERATIVE under the provisions of ARTICLE 5 of this Agreement shall be made directly to the Trustee for the account of ENERGY SERVICES AND TECHNICAL SUPPORT.

(c) This Agreement may not be amended, changed, modified, altered, or terminated except as provided in the Indenture and in each instance only with the prior written consent of the Trustee.

(d) ENERGY SERVICES AND TECHNICAL SUPPORT may collaterally assign, grant a security interest in, or otherwise collaterally transfer its rights in this Agreement to any other person or entity, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to ENERGY SERVICES AND TECHNICAL SUPPORT herein or otherwise. It is understood and agreed that ENERGY SERVICES AND TECHNICAL SUPPORT will collaterally assign its rights under and grant a security interest in its right, title, and interest in this Agreement to the Trustee for the benefit of the Bondholders pursuant to the Indenture, and EAST KENTUCKY POWER COOPERATIVE hereby consents to the assignment and grant of the security interest and hereby agrees that any notice given to ENERGY SERVICES AND TECHNICAL SUPPORT herein required shall in addition be given to the Trustee at the address provided for in the Indenture and that any consent of ENERGY SERVICES AND TECHNICAL SUPPORT shall not be deemed to have been given unless such consent is obtained in writing from the Trustee. Upon the execution and delivery of the Indenture, all appointments, designations, representations, warranties, covenants, assurances, remedies, title, interest, privileges, permits, licenses, and rights of every kind whatsoever herein conferred upon ENERGY SERVICES AND TECHNICAL SUPPORT shall be deemed to be conferred also upon the Trustee for the benefit of the Bondholders, and any reference herein to

ENERGY SERVICES AND TECHNICAL SUPPORT shall be deemed, with the necessary changes in detail, to include the Trustee, and the Bondholders are deemed to be and are third party beneficiaries of the representations, covenants, and agreements of EAST KENTUCKY POWER COOPERATIVE herein contained.

ARTICLE 13. FORCE MAJEURE

13.1 Conditions.

"Force Majeure" shall mean the circumstances set forth in Section 13.2 but only if and to the extent (i) such circumstance is not within the reasonable control, directly or indirectly, of the Party affected, (ii) such circumstances, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Party, (iii) the Party affected has taken all reasonable precautions, due care, and reasonable alternative measures in order to avoid the effect of such event on the Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof, (iv) such event is not the direct or indirect result of such Party's negligence or the failure of such Party to perform any of its obligations under this Agreement, (v) such Party has given the other Party prompt notice describing such event, the effect thereof and the actions being taken in order to comply with the ARTICLE 13, and (vi) the event prevents the Party from performing some or all of its obligations hereunder.

13.2 Instances of and Exclusions from Force Majeure.

13.2.1 Instances of *Force Majeure*.

Subject to the provisions of Sections 13.1 and 13.4 an event of *Force Majeure* shall mean, but shall not be limited to, events including the following:

- (a) acts of war or the public enemy whether war be declared or not;
- (b) public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations;
- (c) explosions, fires, earthquakes, typhoons or other natural calamities;
- (d) strikes or lockouts or other collective or industrial action by workers or employees;
- (e) loss or failure of facilities or equipment.

13.2.2 Exclusions From *Force Majeure*.

Force Majeure shall specifically not include any of the following events:

- (a) loss or reduction of fuel supply for the Plant,
- (b) failure of Plant facilities or equipment to meet original design or performance criteria,

13.3 Effect of Force Majeure.

Except as provided in Section 13.4, any Party shall be excused from performance and shall not be construed to be in default in respect of any obligation hereunder, only to the extent, and only for so long, as failure to perform such obligation shall be due to an event of *Force Majeure*. During such periods of excused performance, the corresponding obligations of the Party unaffected by *Force Majeure* shall also be excused.

13.4 Certain Obligations Not Excused.

13.4.1 Notwithstanding anything in this ARTICLE 13 to the contrary, an event of *Force Majeure* shall not excuse ENERGY SERVICES AND TECHNICAL SUPPORT from the obligation to make payments for any obligation arising prior to the occurrence of such event of *Force Majeure*.

13.4.2 Notwithstanding anything in this ARTICLE to the contrary, an event of *Force Majeure* shall not excuse EAST KENTUCKY POWER COOPERATIVE from its obligation to pay the monthly Capacity Charge payments provided for under ARTICLE 5 for the first 90 days following the occurrence of a *Force Majeure* declared by ENERGY SERVICES AND TECHNICAL SUPPORT. In the event any *Force Majeure* declared by ENERGY SERVICES AND TECHNICAL SUPPORT extends beyond 90 days, EAST KENTUCKY POWER COOPERATIVE shall not be required to make Capacity Charge payments pursuant to Section 5.2.

13.5 Notice of Force Majeure; Procedure.

As soon as possible following the date of commencement of any event of *Force Majeure*, if either Party desires to invoke such event of *Force Majeure* as a cause for delay in the performance of any obligation (other than the payment of money) hereunder, it shall advise the other Party in writing of such date and the nature and expected duration of such event of *Force Majeure*.

13.5.1 If events of *Force Majeure* prevent performance by either Party for a cumulative period in excess of one hundred eighty (180) days over any one year period, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in the Agreement may be continued. If such events of *Force Majeure* prevent performance by either Party for more than 180 cumulative days in any one year period, this Agreement shall terminate unless the Parties agree on arrangements by which this Agreement may be continued.

13.5.2 Within a reasonable time following the date of termination of such event of *Force Majeure*, the Party having invoked such event of *Force Majeure* as a cause for such delay shall submit to the other Party reasonable proof of the nature of such delay and its effect upon the time of performance. The Parties shall thereupon consult with one another concerning the effect of such delay and take steps to minimize overall delays resulting from the event of *Force Majeure*. The Parties:

(i) shall take all reasonable steps to prevent and reduce to a minimum and mitigate the effect of any event of *Force Majeure*, and

(ii) shall use their best efforts to ensure resumption of normal performance of this Agreement after the termination of any event of *Force Majeure* and shall perform their obligation to the maximum extent practicable as agreed between the Parties.

ARTICLE 14. EVENTS OF DEFAULT AND REMEDIES

14.1 Events of Default by EAST KENTUCKY POWER COOPERATIVE.

EAST KENTUCKY POWER COOPERATIVE shall be in default under this Agreement under the happening or occurrence of any of the following events or conditions, each of which shall be deemed to be an "Event of Default" for purpose of this Agreement:

14.1.1 EAST KENTUCKY POWER COOPERATIVE breaches or fails to observe or perform any of EAST KENTUCKY POWER COOPERATIVE's material obligations, covenants, conditions, services or responsibilities under this Agreement, unless within thirty (30) days after written notice from ENERGY SERVICES AND TECHNICAL SUPPORT specifying the nature of such breach or failure, EAST KENTUCKY POWER COOPERATIVE either cures such breach or failure or, if such cure cannot with due diligence be completed within thirty (30) days, commences and diligently pursues such cure in accordance with and subject to any directions or limitations of time established in writing by ENERGY SERVICES AND TECHNICAL SUPPORT.

14.1.2 EAST KENTUCKY POWER COOPERATIVE becomes insolvent, or there is an assignment for the benefit of EAST KENTUCKY POWER COOPERATIVE's creditors, or a proceeding seeking the liquidation or the reorganization of EAST KENTUCKY POWER COOPERATIVE under any applicable insolvency or bankruptcy law now or hereafter in effect shall be filed against EAST KENTUCKY POWER COOPERATIVE (unless such proceedings shall be dismissed or stayed within one hundred twenty (120) days from the date they are instituted), or a petition is filed by EAST KENTUCKY POWER COOPERATIVE under the provisions of any insolvency law or under the provisions of applicable bankruptcy laws, or the business or principal assets of the EAST KENTUCKY POWER COOPERATIVE are placed in the hands of a receiver, administrator, liquidator or trustee.

14.1.3 EAST KENTUCKY POWER COOPERATIVE is dissolved, or EAST KENTUCKY POWER COOPERATIVE's existence is terminated, its generation of electricity is discontinued or its generation system is conveyed to another entity, unless this Agreement is assigned to a successor pursuant to ARTICLE 12, or EAST KENTUCKY POWER COOPERATIVE loses its authority to sell electric capacity and energy..

14.1.4 EAST KENTUCKY POWER COOPERATIVE fails to pay, when due, the payment obligations determined under ARTICLE 5 hereof, and such failure continues for a period of thirty (30) days following the receipt by EAST KENTUCKY POWER COOPERATIVE of a notice of such failure.

14.1.5 EAST KENTUCKY POWER COOPERATIVE or EAST KENTUCKY POWER COOPERATIVE's agents, employees or contractors, in any significant way, alter, damage or otherwise willfully or negligently interfere with the operation of the Plant and such significant alteration, damage or interference is not cured within 30 days following receipt by EAST KENTUCKY POWER COOPERATIVE of a notice giving the details of such alteration, damage or interference .

14.1.6 Any representation or warranty furnished by EAST KENTUCKY POWER COOPERATIVE in this Agreement is false or misleading in any material respect.

14.2 Remedies Upon Default by EAST KENTUCKY POWER COOPERATIVE.

Upon the occurrence of an Event of Default of EAST KENTUCKY POWER COOPERATIVE, ENERGY SERVICES AND TECHNICAL SUPPORT may:

14.2.1 Exercise all remedies available at law or at equity or other appropriate proceedings, including bringing an action or actions from time to time for recovery of amounts due and unpaid by EAST KENTUCKY POWER COOPERATIVE, or for damages, and expenses resulting from the Event of Default, which shall include all costs and expenses reasonably incurred in the exercise of its remedy (including reasonable attorney's fees), on both of the foregoing.

14.2.2 Without recourse to legal process, terminate this Agreement by delivery of a written notice to EAST KENTUCKY POWER COOPERATIVE, without liability to ENERGY SERVICES AND TECHNICAL SUPPORT or its assigns, in which case ENERGY SERVICES AND TECHNICAL SUPPORT shall have the right to continue to operate the Plant and sell electric energy to any third party.

14.3 Events of Default by ENERGY SERVICES AND TECHNICAL SUPPORT.

ENERGY SERVICES AND TECHNICAL SUPPORT shall be in Default under this Agreement upon the happening of occurrence of any of the following events or conditions, each of which shall be deemed to be an "Event of Default" for purposes of this Agreement.

14.3.1 ENERGY SERVICES AND TECHNICAL SUPPORT breaches or fails to observe or perform any of ENERGY SERVICES AND TECHNICAL SUPPORT's material obligations, covenants, conditions, services of responsibilities under this Agreement, unless within thirty (30) days after written notice from EAST KENTUCKY POWER COOPERATIVE specifying the nature of such breach of failure, ENERGY SERVICES AND TECHNICAL SUPPORT either cures such breach or failure or, if such cure cannot be completed within thirty (30) days, commences and diligently pursues such cure.

14.3.2 ENERGY SERVICES AND TECHNICAL SUPPORT becomes insolvent, or there is an assignment for the benefit of ENERGY SERVICES AND TECHNICAL SUPPORT's creditors, or a proceeding seeking the liquidation or the reorganization of ENERGY SERVICES AND TECHNICAL SUPPORT under the federal bankruptcy code or under any applicable insolvency or bankruptcy law now or hereafter in effect, shall be filed against ENERGY SERVICES AND TECHNICAL SUPPORT (unless such proceedings shall be dismissed or stayed within one hundred twenty (120) days from the date they were instituted), or a petition is filed by ENERGY SERVICES AND TECHNICAL SUPPORT under the provisions of any insolvency law or under the provisions of the applicable bankruptcy law, or the business or principal assets of ENERGY SERVICES AND TECHNICAL SUPPORT are placed in the hands of a receiver, administrator, liquidator or trustee.

14.3.3 ENERGY SERVICES AND TECHNICAL SUPPORT is dissolved, ENERGY SERVICES AND TECHNICAL SUPPORT's existence is terminated or its business is discontinued, or ENERGY SERVICES AND TECHNICAL SUPPORT loses its authority to sell energy or ancillary services at agreed upon based rates, unless this Agreement is assigned to a successor pursuant to ARTICLE 12.

14.3.4 ENERGY SERVICES AND TECHNICAL SUPPORT fails to commence Commercial Operation of the Plant within 120 days of November 1, 2002.

14.3.5 Except by reason of a *Force Majeure* event, ENERGY SERVICES AND TECHNICAL SUPPORT fails to deliver all electricity scheduled by EAST KENTUCKY POWER COOPERATIVE to the Delivery Point for 30 consecutive days on which EAST KENTUCKY POWER COOPERATIVE has properly requested energy.

14.3.6 Any representation or warranty furnished by ENERGY SERVICES AND TECHNICAL SUPPORT in this Agreement is false or misleading in any material respect.

14.3.7 Termination of the Site Lease for any reason.

14.4 Remedies Upon Default by ENERGY SERVICES AND TECHNICAL SUPPORT.

Upon the occurrence of an Event of Default by ENERGY SERVICES AND TECHNICAL SUPPORT, EAST KENTUCKY POWER COOPERATIVE may:

14.4.1 Exercise all remedies available or at law or at equity or other appropriate proceedings, including bringing an action or actions from time to time for damages and expenses resulting from the Event of Default, which shall include all costs and expenses reasonably incurred in the exercise of its remedy (including reasonable attorney's fees).

14.4.2 Without recourse to legal process, terminate this Agreement by delivery of a written notice to ENERGY SERVICES AND TECHNICAL SUPPORT declaring termination.

14.4.3 Exercise any and all rights under the performance security instrument provided by ENERGY SERVICES AND TECHNICAL SUPPORT pursuant to Section 6.2, and demand payment of such security.

14.5 Election of Remedies.

Except as specifically limited in the Agreement, each and every right, power and remedy of a Party, whether specifically stated in this Agreement or otherwise existing, may be exercised from time to time and so often and in such order as may be deemed expedient by the exercising Party, and the exercise or the beginning of the exercise of any such right, power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. No delay or omission of a Party in the exercise of any right, power or remedy shall impair or operate as a waiver thereof or of any other right, power or remedy then or thereafter existing.

14.6 Dispute Resolution: Mediation.

Each Party shall appoint a representative who shall be principally responsible for administering this Agreement on behalf of such Party and representing the Party's interests in the event of disputes under this Agreement. To the extent permitted by applicable law, any dispute or disagreement between the Parties relating to or in connection with this Agreement that is not finally settled by a prior discussion between them shall be submitted to mediation upon the written request of a Party, specifying the issue or issues in dispute and summarizing the Party's claim with respect thereto. Mediation shall occur within 60 days of the written request. The mediator shall be agreed upon by both Parties.

ARTICLE 15. MISCELLANEOUS PROVISIONS

15.1 Terms and Conditions.

This Agreement and all of its terms and conditions shall bind and insure to the benefit of the successors and assigns of the respective Parties hereto.

15.2 Governing Laws.

This Agreement shall be governed by the laws of the Commonwealth of Kentucky.

15.3 Entire Agreement.

This Agreement is the entire agreement between the Parties regarding the Plant and the energy generated thereby, and supersedes all prior or contemporaneous discussions, negotiations, illustrations, representations or agreements relating to the subject matter of this Agreement. No changes to this Agreement shall be made or binding upon any Party unless made in writing and signed by each Party.

15.4 Regulatory Approvals.

The effectiveness of this Agreement is subject to the completion and receipt of all necessary governmental and lender approvals in connection therewith and with this Agreement. ENERGY SERVICES AND TECHNICAL SUPPORT shall initiate the process for obtaining and expediting all necessary governmental and other approvals of the Agreement immediately after execution hereof by the Parties. Such approvals shall include, but not be limited to, a determination by the Kentucky Public Service Commission that the ENERGY SERVICES AND TECHNICAL SUPPORT Plant is entitled to non-jurisdictional status, and approval by the Federal Energy Regulatory Commission of the status of ENERGY SERVICES AND TECHNICAL SUPPORT as an Exempt Wholesale Generator. EAST KENTUCKY POWER COOPERATIVE shall cooperate with ENERGY SERVICES AND TECHNICAL SUPPORT in this effort. EAST KENTUCKY POWER COOPERATIVE will commit to seek the necessary approvals from the Kentucky Public Service Commission and Rural Utilities Services, and other regulatory agencies and lenders, as necessary. In the event that all necessary approvals cannot be obtained by October 31, 2002, either Party may terminate this Agreement after 30 days notice and the Parties shall have no further obligations or liabilities hereunder.

15.5 Reopener.

Regulatory modifications to this Agreement, any change in local, state or federal tax laws or ordinances or any change in regulatory or environmental requirements for the Plant may materially alter the business arrangements upon which this Agreement is predicated. Accordingly, in the event of such a modification or in the event it becomes necessary to modify this Agreement in order to comply with the requirements of FERC or any other governmental agency for approval of this Agreement or any other approval required in connection with the activities contemplated in this Agreement, or for either Party to maintain its status as an Exempt Wholesale Generator under the Public Utility Holding Company Act of 1935, as amended, the Parties agree to negotiate in good faith to enter into an amendment of this Agreement that restores, to the maximum extent feasible in the circumstances, the economic benefits and burdens of this Agreement. If the Parties are unable to agree on such amendment, they will submit the matter to mediation pursuant to ARTICLE 14 hereof, to the extent permitted by applicable law.

15.6 Notices.

All written notifications pursuant to this Agreement shall be personally delivered or mailed by first class mail, return receipt requested, and sent by facsimile transmission:

EAST KENTUCKY

POWER COOPERATIVE: EAST KENTUCKY POWER COOPERATIVE
4775 Lexington Road 40391
P.O. Box 707 40392
Winchester, Kentucky
Fax No. (859) 744-6008
Phone (859) 744-4812

Attention: Mrs. Julie Tucker

**KENTUCKY ENERGY
PROJECT:**

Energy Services and Technical Support
308 Main Street
PO Box 1361
Paintsville, Kentucky 41240
Fax No: (606) 789-5869
Phone (606) 427-7211
Attention: Mr. Dallas M. Peavey, Jr.

except as otherwise specified by either Party upon prior written notice to the other.

15.7 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

15.8 Invalidity.

If any provision of this Agreement shall be determined by an agency or court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed separate, distinct and independent and the remainder of this Agreement shall remain in full force and effect and shall not be invalidated or otherwise affected by such determination.

15.9 Non Discrimination.


This Agreement shall be subject to Paragraphs 1-7 of Section 202, Subpart B, of Presidential Executive Order 11246, September 24, 1965, which is hereby incorporated by reference and made a part hereof.

15.10 Continuing Disclosure.

EAST KENTUCKY POWER COOPERATIVE hereby covenants and agrees that it will comply and carry out all of the provisions of the mutually agreed upon Disclosure Certificate. Notwithstanding any other provision of this Agreement, failure of EAST KENTUCKY POWER COOPERATIVE to comply with the Disclosure Certificate shall not be considered an Event of Noncompliance or default under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

EAST KENTUCKY POWER COOPERATIVE

By: 
Name: Ronald D. Brown
Authorized Representative

ENERGY SERVICES AND TECHNICAL SUPPORT, LLC.

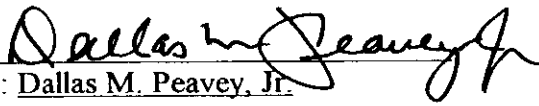
By: 
Name: Dallas M. Peavey, Jr.
Authorized Officer

EXHIBIT A
OPERATING PERFORMANCE CRITERIA FOR
ENERGY SERVICES AND TECHNICAL SUPPORT
KENTUCKY ENERGY PROJECT

<u>PERFORMANCE PARAMETERS</u>	<u>CRITERIA</u>
<u>START UP PATTERN</u>	
TIME FROM DE-SYNCHRONIZATION TO SYNCHRONIZATION.	1 HOUR
TIME FROM NOTIFICATION TO FULL LOAD	1 HOUR
PLANT SYNCHRONIZATION- COMBINED CYCLE MODE	
RETURN FROM PLANT LAYUP	24 HOURS
COLD START	12 HOURS
HOT START	1 HOUR
MINIMUM STABLE NET GENERATION	5 MW
MAXIMUM NET GENERATION	105 MW
MINIMUM RUN TIME ONCE SYNCHRONIZED	4 HOURS
<u>RAMP PATTERN</u>	
RAMP RATE BETWEEN MINIMUM LOAD AND BOTTOM OF LOW RANGE DDC (10-30 MW)	5 MW/MIN
RAMP RATE BETWEEN BOTTOM AND TOP DDC (OR NORMAL RAMP RATE).	5 MW/MIN
<u>AUTOMATIC GENERATION CONTROL</u>	
GE MARK V	SET POINT CONTROL

EMERGENCY RESPONSE

EXTREME EMERGENCY RAMP RATE UNDER
MANUAL CONTROL 25 MW/MIN

EXTREME EMERGENCY RAMP RATE UNDER
DDC CONTROL 25 MW/MIN

ISLAND OPERATION (CONTINUE AFTER
SEPARATION FROM SYSTEM, RE-PARALLEL
WITHOUT EXTERNAL POWER) YES

BLACK START CAPABILITY YES

FREQUENCY RESPONSE

FREQUENCY RESPONSE (%) 5-10%

GOVERNOR CONTROL LOAD RANGE 3-5 MW

POWER SYSTEM STABILIZER YES

VOLTAGE REGULATION

AUTOMATIC VOLTAGE REGULATION YES

GENERATOR POWER FACTOR 90 % LAG OR LEAD AT
MAXIMUM GENERATION

ENVIRONMENTAL LIMITATIONS

WILL MEET OR BE LOWER THAN
PERMIT REQUIREMENT/LIMITATIONS. YES

THERMAL LIMITATIONS

NONE

DELIVERY POINT SPECIFICATIONS

LOCATION

HIGH VOLTAGE TERMINALS OF
GENERATOR STEP-UP
TRANSFORMERS (GSU)

GSU DUAL HIGH VOLTAGE WINDINGS

GSU CAPABLE OF OPERATING AT 69
KV (NOMINAL) INITIALLY, AND 138
KV (NOMINAL) FUTURE

GSU HIGH VOLTAGE WINDING TAPS

69 KV HIGH VOLTAGE WINDING WITH
NO-LOAD TAP CHANGER AND FIVE
HIGH VOLTAGE WINDING TAPS, ONE
AT 69 KV PLUS TWO - 2 ½ %
INCREMENTS ABOVE, AND TWO - 2 ½
% INCREMENTS BELOW 69 KV.

138 KV HIGH VOLTAGE WINDING
WITH NO-LOAD TAP CHANGER AND
FIVE HIGH VOLTAGE WINDING TAPS,
ONE AT 138 KV PLUS TWO - 2 ½ %
INCREMENTS ABOVE, AND TWO - 2 ½
% INCREMENTS BELOW 138 KV.

EXHIBIT B

PLANT DESCRIPTION

The following is brief description of ENERGY SERVICES AND TECHNICAL SUPPORT Kentucky Energy Project:

The Kentucky Energy Project is situated on a 120 acre facility, located within the East Kentucky Power Cooperative system area. The Project is a combined cycle power generation facility capable of producing a maximum of 105 MW of electrical energy and capacity for sale to the local electric utility -East Kentucky Power Cooperative. The Project will utilize a recycled and/or refined #2 grade fuel ("clean diesel") from an "on-site" recycling facility. The list of equipment to be utilized at the facility will consist of :

Two (2) GE LM-5000 STIG gas turbines rated in combined cycle mode at this site for 105 MW, and will provide low pressure process steam to the recycling facility. The units will have steam injection to assist in the lowering of any potential NOx air emissions. The typical characteristics are as follows - heat rate from each unit will be 8150 LHV Btu/kWh/unit, exhaust flow of 1,227,000 PPH, exhaust temperature of 758 F @ turbine, 270 F at the stack. Steam Flow will be - Fuel nozzle 39,000 PPH, Compressor Discharge of 44,900 PPH, LPT Nozzle 55,400 PPH.

The gas turbines will provide the waste heat to an ABCO Heat Recovery Steam Generator for the manufacturing of steam to a 20 MW GE steam turbine.

The pre-exhausted air will be run through an ABCO-Peerless Selective Catalyst Reduction unit to reduce the NOx emissions to less than 9 PPM, and the CO to less than 8.9 PPM. There will be a Continuous Emissions Monitoring (CEMS) unit installed on the stack to provide continuous air quality monitoring to ensure compliance to all local, state, and federal agencies.

There will be a closed loop cooling tower to control and cool water used throughout the plant generating system for cooling, as well as a water demineralizing system to provide a clean and dependable source of boiler water supply for the heat recovery steam generating system.

The project is a "zero discharge" facility with a series of sump collections systems, recycling any outside water source back to be cleaned and re-used within the facility.

There will be a "Black Start" generator to "self provide" in cases where the facility is completely isolated from the local area grid system, and in need of internal power for starting up the remaining facility.

The Recycling facility will provide the project with an "on-site" truck/tanker/rail-car unloading station as well as a "tank farm" consisting of twelve (12) processing and storage tanks. The recycling facility will consist of a patented Green Oasis Environmental seven thousand (7000)

gallon per hour processing facility, enabling the utilization of used and/or waste oil as a supply at the power generation facility. There will also be an on-site truck and equipment maintenance and parking/storage facility. The recycling facility will also provide a primary water source to the power generation facility, thereby reducing the dependence on any large outside water source.

The facility personnel will work out of a ten thousand (10,000) square foot administration building located on site to provide space for offices, conference rooms, dining facilities, locker facilities, and employee parking space.

EXHIBIT C

COMMERCIAL OPERATION CRITERIA

1. Operation at full load for 96 consecutive hours.
2. Three successful start-ups in which the Plant achieved full load operation within the time limits specified in Exhibit A.
3. Ability to respond to requests for changes in load from the minimum dispatch level specified in Exhibit A to full load at the rates of load change specified in Exhibit A.
4. Compliance with all permit limits regarding air emissions, water discharges and noise limits.



EXHIBIT V

July 9, 2002

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED
AND VIA FAX

Mr. Dallas M. Peavey, Jr.
Energy Services and Technical Support, Inc.
308 Main Street
Post Office Box 1361
Paintsville, KY 41240

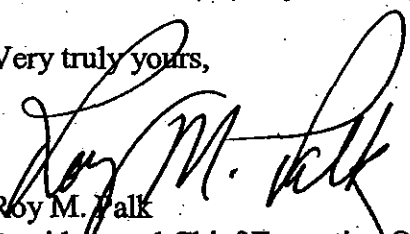
Re: Electric Energy and Capacity Sales Agreement Dated November 16, 2001

Dear Mr. Peavey:

East Kentucky Power Cooperative, Inc. ("EKPC") was informed on Friday, July 5, 2002 by Mr. Scott Preston, attorney for Energy Services and Technical Support, Inc. ("ES&TS"), that ES&TS will not be able to comply with the requirements of Sections 6.1 and 6.2 of the Electric Energy and Capacity Sales Agreement (the "Agreement"). Compliance with those sections of the Agreement, which require ES&TS to provide acceptable security for the project start-up delay liquidated damages liability and for contract performance, is essential for EKPC's participation in the Agreement.

Based on this information, EKPC must exercise its right to terminate the Agreement, pursuant to Section 6.2.3. This letter shall serve as EKPC's notice of such termination, which shall be effective in ten (10) days, on July 18, 2002.

Very truly yours,


Roy M. Falk
President and Chief Executive Officer

rmp/ln

c: Scott Preston, Esq.

bc: Dave Eames
Randy Dials
Frank Oliva
Ron Brown